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October 23, 2006

Received 10/23/06
MSHA/OSRV

The Honorable Elaine Chao
Secretary
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, D.C. 20210

RE: Proposed Rule on Assessment of Civil Penalties
71 *Federal Register* 53054 published September 8, 2006

Dear Secretary Chao:

After several mining tragedies this year – each resulting in multiple fatalities – the American people and the Congress have been disturbed to learn of the safety records of the mines leading up to the accidents. At Sago, for example, the number of citations, orders, and safeguards issued in 2005 represented a 205% increase over 2004. As of the day of the Sago explosion in early January 2006, the average fine per citation in 2005, however, was a meager \$156. On that day, all of the penalties imposed thus far for 2005 amounted to less than half the maximum fine Congress had authorized MSHA to impose for an individual violation. In the meantime, during the first three quarters of 2005, the Sago mine's parent company made \$466 million in revenues. Fines averaging \$156 per violation have very little deterrent effect on a company earning hundreds of millions of dollars in revenue.

The deaths of miners at Sago, Aracoma Alma, Darby, Jim Walters, and other mines over the past several years have shined a light on the broken penalty structure employed by MSHA in enforcing the nation's mine safety and health law. In passing the Mine Improvement and New Emergency Response (MINER) Act of 2006, Congress has required the agency to promulgate new penalty regulations by December 30, 2006. MSHA's proposed regulations purport to strengthen civil penalties in order to reduce fatalities and improve miner health and safety. MSHA's goal is the correct one, and I am pleased that MSHA recognizes the link between tough penalties for lawbreaking and

AB51-COMM-49

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improved health and safety outcomes. There are, however, a number of shortcomings in the proposal which should be addressed immediately:

1. MSHA must provide explicit and sufficient weight to the size of the controlling entity when determining penalties. If penalties are to have a deterrent effect, they must be felt. For a company like International Coal Group, which owned Sago, the fines at Sago as of January 2, 2006, had amounted to less than a slap on the wrist. Large, highly profitable corporations should not be allowed to avoid higher fines merely because they have bought smaller-sized individual mines. Moreover, as a controlling entity could be involved in a number of industries and businesses at once, an accurate measure of their size for deterrence purposes should not be based on the size of their annual tonnage or hours worked but by their revenues, mining-related or not.
2. MSHA must not excuse small mines from safety and health violations merely because of their size. Small mines with fewer workers and more sporadic operations than larger mines pose hazards of their own. For example, the proposed regulation does not assign points for size unless a coal mine extracts over 15,000 tons of coal that year or a metal/non-metal mine has over 10,000 hours worked that year. This point structure excuses a quarter of all coal mines and more than half of all metal/non-metal mines from any size points when calculating penalty amounts.
3. The final point schedule must result in higher fines actually being imposed for health and safety violations. In the proposed regulation, it appears that what MSHA has provided with the right hand, it has taken away with the left hand. The proposed regulation increases points assigned for various factors associated with a violation, but it also shifts the points required for penalties upward. For example, under the old regulations, 89 points are required before MSHA imposes a fine of more than \$25,000; while under the proposed regulations, 128 points would be required before MSHA would impose a fine of more than \$25,000. This sleight of hand in the proposed regulation may result in lower penalties and less deterrence against lawbreaking. The final penalty point conversion table should reflect an increase in fine amounts for points assigned, not a reduction.
4. Shortening the time period for considering a mine operator's history of violations, from 24 months to 15, is a step backwards from tough law

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5. enforcement. Some have argued that a shorter time frame provides the agency the ability to recognize improvements sooner. Maintaining a longer time frame, however, ensures that there is a greater deterrence to ever developing – or re-developing – a history of safety and health violations.
6. The proposed regulations should not allow operators to split hairs when it comes to repeat violations. An operator that repeatedly fails to comply with an area or category of standards – such as ensuring stable roofs – has committed repeat violations, regardless of whether the violations could be parsed into separate subsections and subparagraphs of the law. The proposed regulations, however, seem to allow an operator to claim that a violation of subparagraph (a) of any rule, followed by a violation of subparagraph (b), then (c), then (d), then a related standard could not be construed as repeat violations. If a mine operator has a repeated problem with ensuring compliance in a particular health and safety area, its repeated violations in that area should be treated as such.

The foregoing represent a few particular items I urge MSHA to address immediately. A number of other important points have been raised by mine safety and health advocates in this comment period which I hope MSHA will hear and address as well.

Moreover, it is important to point out that increasing the penalties available for mine safety and health violations, by itself, does not provide effective law enforcement. Tougher penalties must actually be imposed in order to have any effect, and that work requires sufficient staffing and enforcement-minded inspections. With two more miner deaths in the past several days, a great deal more work, including improving safety and health standards themselves, remains to be done to ensure a safer, healthier workplace for the brave men and women who work in the nation's mines.

Thank you very much for your attention.

Sincerely,



GEORGE MILLER
Senior Democratic Member

Committee on Education and the Workforce
Congressman George Miller, Senior Democratic Member

Duplicate

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FAX TRANSMISSION COVER SHEET

10/23/06
(DATE)

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10/23/06
MSHA/OSRV

TO: The Honorable Elaine Chao
Secretary of Labor

FROM:

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<i>BETSY MILLER KITTREDGE</i>	<i>DAISY MINTER</i>
<i>RACHEL RACUSEN</i>	<i>SHELBY STAUFFER</i>
<i>XMARK ZUCKERMAN (Jody Calentine)</i>	

FAX NUMBER: 202-693-9441

TOTAL PAGES (including this cover sheet): 4

COMMENTS:

* Subject Reference:
RIN 1219-ABS1

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